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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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C&H SUGAR COMPANY, INC.
(erroneously sued as C&H Sugar Company)

E-filing

UNITED STATES DISTRICT COURT

EMC

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUGAR WORKERS UNION LOCAL NO. 1,

Plaintiff,

v.

C&H SUGAR COMPANY,

Defendant.

Case No. **C 07 - 2738**

Contra Costa County Superior Court
Case No. N07 0250

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441 (B)**

(Federal Question Jurisdiction)

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF SUGAR
WORKERS UNION LOCAL NO. 1 AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant C&H SUGAR COMPANY, INC. (erroneously
sued as C&H Sugar Company) ("Defendant") hereby removes the above-captioned action to the
United States District Court for the Northern District of California, based on the following facts:

1. On March 23, 2007, an action was commenced in the Superior Court of
California, County of Contra Costa, entitled Sugar Workers Union Local No. 1 v. C&H Sugar
Company, Case No. N07 0250 (Petition to Compel Arbitration). Defendant was personally
served with a Petition to Compel Arbitration on May 14, 2007. A copy of the Petition and

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NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441 (B)
SUPERIOR COURT CASE NO. N07 0250

1 supporting papers are attached as Exhibit A to this Notice of Removal. Because this Notice of
2 Removal is filed within thirty days of service of the Petition on Defendants, removal is timely
3 pursuant to 28 U.S.C. § 1446 (b) and Federal Rules of Civil Procedure 6(a).

4 2. As will be demonstrated below, the subject civil action necessarily arises under
5 Section 301 of the Labor Management Relations Act (LMRA). As such, it is a case over which
6 this Court has original jurisdiction under 28 U.S.C. § 1331, and removal is therefore appropriate
7 under 28 U.S.C. § 1441.

8 3. At all relevant times, defendant C&H Sugar Company, Inc. ("C&H") has been,
9 and is, a corporation whose primary business is the refinement, production, sale and distribution
10 of sugar. As such, it has been, and is, a corporation "in commerce" and "in an industry affecting
11 commerce" within the meaning of the Labor Management Relations Act ("LMRA"), 29 U.S.C.
12 §§ 152(2), (6), (7) and 185(a).

13 4. At all relevant times, the Sugar Workers Union Local No. 1 has been, and is a
14 labor organization in which certain employees of C&H participate and which exists for the
15 purpose of dealing with employees' grievances, labor disputes, wages, rates of pay, hours of
16 employment, and conditions of work. At all relevant times, the Sugar Workers Union Local No.
17 1 has been, and is, a labor organization within the meaning of Section 2(5) and 30 (1)(a) of the
18 LMRA, 29 U.S.C. §§ 152(5) and 185(a).

19 5. At all relevant times during their employment with C&H, alleged grievants
20 Franklin Wright and Tim Shelton (collectively, "the Grievants") were employed by C&H as a
21 Process Technician and a Millwright respectively, and were thus, employees of a bargaining unit
22 of C&H, which was represented for purposes of collective bargaining by the Sugar Workers
23 Union Local 1. The Grievants cannot dispute their status as union members and in fact
24 acknowledge the same at various points in their Petition (*e.g.*, Petition, ¶¶ 1, 3, 5, 6).

25 6. At all relevant times, the terms of the Grievants' employment with C&H was
26 specifically governed by a Collective Bargaining Agreement ("CBA") entered into between
27 C&H and the Sugar Workers Union Local No. 1. A true and correct copy of the CBA is

1 attached hereto as Exhibit B. At all relevant times, this CBA has been and is a contract between
2 an employer and a labor organization within the meaning of Section 301(a) of the LMRA, 29
3 U.S.C. § 185(a).

4 7. Plaintiff's factual allegations include various types of conduct covered by the
5 CBA. For example, Plaintiff alleges that a dispute exists over the interpretation and/or
6 application of the CBA. (Petition, ¶¶ 19, 22). Plaintiff specifically alleges that Defendant is in
7 violation of the CBA because it refuses to recognize the alleged grievances of Wright and
8 Shelton. (Petition, ¶¶ 11, 16, 17, 18, 19). Thus, it is clear that the Petition involves a claim
9 arising under § 301 of the LMRA, 29 U.S.C. § 185.

10 8. The LMRA confers federal jurisdiction in any suit between an employer and a
11 labor union for violation of a collective bargaining agreement. *See* 29 U.S.C. § 185(a),(b); *K.V.*
12 *Mart Co. v. United Food & Commercial Workers Int'l Union, Local 324*, 173 F.3d 1221, 1224-
13 1225 (9th Cir. 1999). The preemptive force of Section 301 of the LMRA is such that it "converts
14 an ordinary state law complaint into one stating a federal claim for purposes of the well-pleaded
15 complaint rule" and the entire Complaint is removable to federal court. *Caterpillar Inc. v.*
16 *Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425 (1987); *Franchise Tax Board v. Construction*
17 *Laborers Vacation Trust*, 463 U.S. 1,23, 103 S.Ct. 2841 (1983) ("if a federal cause of action
18 completely preempts a state cause of action, any complaint that comes within the scope of the
19 federal cause of action necessarily 'arises' under federal law"); *Associated Builders &*
20 *Contractors, Inc. v. Local 302, IBEW*, 109 F.3d 1353, 1356 (9th Cir.1997); *Milne, supra*, 960
21 F.2d at 1406.

22 9. Because this lawsuit alleges a violation of a contract between an employer and a
23 labor organization representing employees in an industry affecting commerce, it is by definition,
24 under Section 301 of the LMRA, (29 U.S.C. § 185), a suit arising under an act of Congress
25 regulating commerce. As such, it is an action over which this Court has original jurisdiction,
26 without respect to the amount in controversy and without regard to the citizenship of the parties.
27 29 U.S.C. § 185 and 28 USC § 1331.

10. Since this action under 29 U.S.C. § 185 is a suit involving claims of a right arising, if at all, under the laws of the United States, it may be removed to this Court under the provisions of 28 U.S.C. §§ 1441(b) and 1446, without regard to the citizenship or residence of the parties.

11. Copies of all other pleadings, processes and orders filed in the State Court action (and not previously referenced), are attached to this Notice of Removal as Exhibit C.

12. Defendants, upon filing this Notice of Removal, are also filing a copy of the same with the clerk of the Superior Court of California, County of Contra Costa, to effect this removal in accordance with 28 U.S.C. § 1446(d)

13. In the event the Court should be inclined to remand this action, Defendant requests that the Court issue an order to show cause why the case should not be remanded, giving Defendant (as well as Plaintiff) an opportunity to present proper briefing and argument prior to any possible remand. Because a remand order is not subject to appellate review, such a procedure is appropriate.

DATED: May 24, 2007

By Jennifer Svanfeldt
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